

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

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ANGEL L. MARTINEZ,

Plaintiff,

Civ. Action No.  
9:04-CV-0440 (FJS/DEP)

vs.

SCOTT THOMPSON, *et al.*,

Defendants.

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APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF:

SIVIN, MILLER LAW FIRM  
170 Broadway  
Suite 600  
New York, NY 10038

EDWARD SIVIN, ESQ.\_

FOR DEFENDANTS:

HON. ANDREW M. CUOMO  
Office of the Attorney General  
State of New York  
615 Erie Boulevard West  
Suite 102  
Syracuse, NY 13204-2455

SENTA B. SIUDA, ESQ.  
TIMOTHY P. MULVEY, ESQ.  
Assistant Attorneys General

DAVID E. PEEBLES  
U.S. MAGISTRATE JUDGE

ORDER

Currently pending before the court in connection with this civil rights action, brought by the plaintiff pursuant to 42 U.S.C. § 1983, is a motion to compel discovery. Dkt. No. 138. In his motion, plaintiff seeks the production of photographs of ten specified corrections workers employed by the New York State Department of Correctional Services ("DOCS"), and that he be furnished copies of those photographs, and additionally requests the identity and photographs of any other corrections personnel known to have been in the special housing unit ("SHU") at the Oneida Correctional Facility during the specified shifts on February 25 and 26, 2003. Defendants oppose the motion, both on the basis of lack of relevance and additionally asserting prejudice. Dkt. No. 142.

Oral argument was held in connection with plaintiff's motion during a digitally recorded telephone conference held on June 18, 2008. At the close of the hearing I issued a bench decision granting the motion in part, but otherwise denying it. Based upon the court's oral decision rendered on June 18, 2008, which decision is incorporated herein by reference, it is hereby

ORDERED as follow:

1) Plaintiff's motion to compel discovery (Dkt. No. 138) is GRANTED, in part.

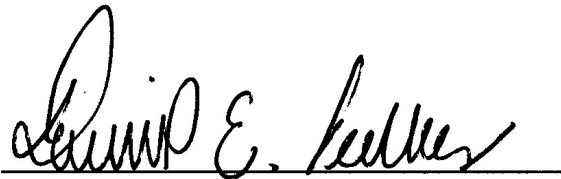
2) On or before July 11, 2008 defendants are directed to produce any photographs within their possession, custody or control of DOCS corrections personnel Stevens, Mooney, Conklin, Novel, Frye, Swinbourne, Smith, Morris and Mullen for inspection by the plaintiff and his attorney. Production is to occur at a mutually convenient date and time at an office regularly maintained by the New York State Attorney General in either Syracuse, New York or in New York City, at plaintiff's option.

3) Except to the extent indicted in the foregoing paragraph, plaintiff's motion to compel discovery (Dkt. No. 38) is hereby DENIED.

4) No costs and attorney's fees are awarded to either party in connection with plaintiff's motion to compel discovery.

5) The clerk of this court shall serve this order on the parties in accordance with this court's local rules.

Dated: June 24, 2008  
Syracuse, NY

A handwritten signature in black ink, appearing to read "David E. Peebles", written over a horizontal line.

David E. Peebles  
U.S. Magistrate Judge